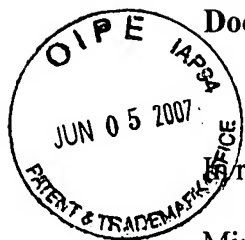


IFW



Docket No.: 3226D-0022

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of

Ming-Fu Kuo

U.S. Patent Application No. 10/700,493

Filed: November 5, 2003

For: PUTTER

:
:
: Confirmation No. 6281
:
: Group Art Unit: 3711
:
: Examiner: TRIMIEW, RAEANN

REQUEST FOR RECONSIDERATION OF
DECISION ON PETITION

Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

In response to the Decision on Petition mailed April 5, 2007, Applicant hereby request reconsideration of the decision.

The application was abandoned because the Patent and Trademark Office Records indicated the Issue and Publication Fees were not timely paid in response to the Notice of Allowance mailed March 23, 2005.

As stated in Applicant's Petition to Withdraw Holding of Abandonment, filed on March 29, 2006, applicant's attorney of record, first became aware of the abandonment on March 28, 2006, upon receiving a telephone call from Examiner Raeann Gordon and submits that the Petition to Withdraw the Notice was promptly submitted as required by 37 CFR §1.8(b)(1).

The Notice of Allowance mailed March 23, 2005, was never received by Applicant's Attorney and therefore, a response was not filed. The Patent Application Information Retrieval system indicates that the Notice of Allowance was mailed on March 23, 2005, to an incorrect

address. Applicant submits that Applicant's Customer Number was properly identified on Applicant's Application Transmittal filed on November 5, 2003 (copy enclosed). As provided in the Manual of Patent Examining Procedure, if more than one correspondence address is specified in a single document, the office will establish one as the correspondence address and **will use the address associated with a Customer Number, if given, over a typed correspondence address (MPEP601.03)**. The Office inadvertently entered the typed correspondence address. It is Applicant's contention that all correspondence is to be associated with Applicant's Customer Number and Applicant's documents were to be mailed to the address associated with Applicant's Customer Number 23338 at the time the Notice of Allowance of March 23, 2005 was mailed.

In the Decision of April 5, 2007, Applicant's Petition was dismissed. In dismissing the Petition the Attorney and the Office of Petitions stated:

Petitioner should be aware that the number on the transmittal and the declaration mentioned above is not identified as a customer number.

Also, on the declaration, petitioner stated to direct all correspondence to Dennison, Schultz.....

It is respectfully submitted that the Examiner's reasoning for dismissing the Petition is flawed for two reasons:

1.) 37 CFR. 1.33 states that:

The correspondence address must either be in an Application Data Sheet (37 CFR 1.76) or in a clearly identifiable manner elsewhere in any papers submitted with the application filing.

Applicant complied with the above. In fact, Applicant's Transmittal Letter includes a five digit number at the bottom of the page numbers between 2 ½ and 3 times the size of the largest type on the page. The five digit number should be clearly recognized as a "Customer Number" due to the practice of the United States Patent and Trademark Office in using such

numbers. The Customer Number was clearly marked due the increase in font size, bold print and bracketing i.e. *23338*. Applicant submitted a Change of Correspondence Address which indicates the correct customer to be 22429 effective April 26, 2006.

2.) 37 CFR 1.33 clearly provides:

If more than one correspondence address is specified in a single document, this office will ^{xx}> select one of the specified addresses for use as the correspondence address and, if given will select the address associated with a Customer Number over a typed correspondence address, in the following order: A. Application Data Sheet, B. Application Transmittal, C. Oath or Declaration.

Accordingly, it is clear that Applicant was in full compliance with 37 CFR 1.33 and the U.S. Patent and Trademark Office failed to follow the rules.

Therefore, the abandonment of the above-identified application was entirely due to the error by the United States Patent and Trademark Office and this Request for Reconsideration should be granted.

The Examining Attorney also stated that:

Diligence requires an Applicant to keep appraised as to the status of his or her application citing *Winkler v. Ladd*, 221 F.Supp. 550 (D.D.C. 1963).

In the cited case, the United States Patent and Trademark Office had no obligation to notify Applicant of the Office Action. In fact, in that case the United States Patent and Trademark Office notified the Assignee. In the present case, the U.S. PTO had an obligation to notify Applicant and failed to follow the rules. In the cited case, Applicant waited through almost 3 ½ years from when he should have learned of the problem before filing a Petition to Revoke for an unavoidable delay. In the present case, Applicant filed a Petition to Withdraw based on a United States Patent and Trademark Office error. In the present case Applicant acted promptly. Further, in the cited Decision, the Applicant had actual notice of a problem and took

no action. In the present case, Applicant received no notice of any problem and that problem was due entirely to a failure by the United States Patent and Trademark Office to follow the rules of practice.

Applicant is enclosing a copy of the Notice of Allowance mailed March 23, 2005 bearing the incorrect mailing address. The correct mailing address associated with Applicant's Customer Number 23338 at the time of mailing was not used. Therefore, Applicant did not receive said notice.

Accordingly, it is Applicant's contention that this Request for Reconsideration of Decision on Petition and the Petition should be granted.

Finally, Applicant's Attorney sent a representative (Ms. Murphy) to the Legal Secretaries and Administrators Conference on April 11 -13, 2007. At the conference, Ms. Murphy spoke with Shirene Willis Brandley, Petitions Attorney for the Office of Petitions and asked why in submitting five (5) Petitions based on essentially the same grounds, three (3) were granted and two (2) denied? She was advised that our office should resubmit the Petition with a copy of one of the Office Actions which had been revived. Accordingly, Applicant is attaching herewith a copy of a Decision granting their Petition to Revive in another case where the Patent Office failed to follow the rules. In addition, Applicant's Attorney has filed a Request for Reconsideration in the other case where the Decision was erroneously denied.

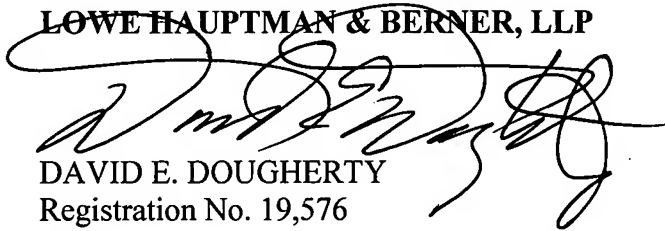
REMARKS

In view of the above, it is Applicant's contention that the abandonment should be withdrawn and the application allowed. Applicant submitted the Issue and Publication Fees on March 29, 2006.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

LOWE HAUPTMAN & BERNER, LLP



DAVID E. DOUGHERTY
Registration No. 19,576

1700 Diagonal Road, Suite 300
Alexandria, Virginia 22314
(703) 684-1111
(703) 518-5499 Facsimile
Date: May 14, 2007
DED/eem